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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 5145, as introduced

TOPIC: Creates an administrative fine for property/casualty and auto insurers who fail to deal fairly and in good faith in settlement of claims

SPONSOR: Representative Mike Huckleberry

CO-SPONSORS: Representatives Fred Durhal, Kate Segal, Jennifer Haase, Lesia Liss, Sarah Roberts, Robert Jones, Shanelle Jackson, Mike Simpson, David Nathan, Dian Slavens, Rashida Tlaib, Coleman Young, Marie Donigan, Joan Bauer, Jon Switalski, Vicki Barnett, Jim Slezak

COMMITTEE: Insurance

Analysis Done: July 10, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

One of the touted benefits of the Essential Insurance Act (EIA) was to ensure that claims are settled promptly and that payments are received in a timely manner. However, if policyholders believe that their claim has not been fairly resolved and are unable to satisfactorily resolve the dispute themselves or with the assistance of OFIR, they must either settle for less than what they believe is appropriate or hire an attorney to pursue action against the insurer. The cost of this litigation often discourages individuals from pursuing action against the insurer, even if they believe they have been treated unfairly. Because insurance companies are not required to report detailed claims and litigation data, it is difficult for the Commissioner to effectively monitor on an ongoing basis whether insurance companies are fulfilling their obligations to their policyholders.

The Commissioner has the authority to take action if an insurance company is found to have engaged in methods of unfair competition or unfair or deceptive acts or practices that are prohibited by Chapter 20 of the Insurance Code. Unfair or deceptive acts or practices can include failing to attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

DESCRIPTION OF BILL

The proposed legislation would add section 2026C to the Insurance Code and would subject an insurer to a \$1,000,000 administrative fine for multiple violations of proposed new sections of the Insurance Code, i.e., Sections 2026A or 3149, but only after notice and opportunity for a hearing and order of the commissioner..

SUMMARY OF ARGUMENTS

Pro

An insurer should have to pay penalties in instances where it has been found to have failed to settle an insurance claim in good faith or violated a commissioner's order. When individuals go to court to seek remedy against insurance companies who do not settle their claims in good faith, the associated costs often far outweigh the amount they may receive in a judgment if they win the case. The costs often discourage individuals from pursuing action against the insurer, even if they have been treated unfairly. The possibility of heightened administrative fines for multiple violations of proposed new Sections 2026A and/or 3149 would act as a deterrent, and encourage insurers to settle claims in good faith.

Con

The legislation isolates insurers who write property and casualty and auto insurance. All insurers, regardless of authorized lines, should be subjected to the same penalties for similar violations.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bill:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: OFIR may incur additional expense to ensure that consumers are aware of the amendments contained in this legislation through mailings and/or updates to current consumer publications.

Revenue:

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None known.

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan:

Budgetary: None

Revenue: When the attorney general brings suit and recovers on behalf of the residents of the State of Michigan, the monetary penalties will be remitted to the Michigan Department of Treasury; this will increase state revenues.

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

The Michigan Department of Treasury will have to process the penalty remittance payment. The Office of the Attorney General may bring suit for recovery for violations under Chapter 20 of the Michigan Insurance Code.

ANY OTHER PERTINENT INFORMATION

The proposed legislation is similar to legislation that has been previously introduced.

This bill is tie-barred to House Bill 4844 and House Bill 5149. The bill also references section 2026A of the Insurance Code; however, language does not exist for section 2026A in the Insurance Code, nor has such legislation been introduced yet.

ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.

A handwritten signature in black ink, appearing to be 'KR' with a long horizontal stroke extending to the right.

Ken Ross
Commissioner

7-13-09

Date